

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 DAVID RICHARD DANCE,)
8) CASE NO. C17-0156RSM
Petitioner,)
9) ORDER DENYING PETITIONER'S
v.) MOTION FOR RECONSIDERATION
10)
11 UNITED STATES OF AMERICA,)
Respondent.)
12

13
14 THIS MATTER comes before the Court on Petitioner's Motion to Alter or Amend
15 Judgment pursuant to Federal Rule of Civil Procedure 59(e), which he also calls a Motion for
16 Reconsideration. Dkt. #21. Petitioner asserts that the Court committed a clear error in finding
17 that he compounded and nearly tripled the losses suffered by his clients and victims after he
18 became aware of the Amendola fraud on July 21, 2011. *Id.* The government opposes the motion
19 on the grounds that is untimely and introduces no new facts or law not already considered by the
20 Court previously. Dkt. #22. For the reasons set forth below, the Court DENIES the motion.
21

22 On February 2, 2017, Petitioner filed a 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or
23 Correct Sentence. Dkt. # 1. Petitioner challenged the 48-month sentence imposed on him by
24 this Court after he pleaded guilty to one count of Wire Fraud in violation of 18 U.S.C. § 1343,
25 on the basis of ineffective assistance of counsel. *USA v. Dance*, CR15-0349RSM at Dkts. #6,
26 #10 and #17. On August 15, 2017, the Court denied Petitioner's motion. Dkt. #20. The instant
27 motion followed on September 12, 2017. Dkt. #21.
28

1 The Court first addresses the timeliness of the motion. A motion for relief from judgment
2 under Federal Rule of Civil Procedure Rule 59(e) must be filed within 28 days of the entry of
3 judgment, and should be granted when the Court: “(1) is presented with newly discovered
4 evidence; (2) committed clear error or the initial decision was manifestly unjust; or (3) if there is
5 an intervening change in the controlling law.” *In re Syncor ERISA Litigation*, 516 F.3d 1095,
6 1100 (9th Cir. 2008) (citation omitted); Fed. R. Civ. P. 59(e). After the denial of Petitioner’s
7 motion under Section 2255, there was no Judgment entered against Plaintiff because no Judgment
8 was required. Accordingly, Rule 59(e) is inapplicable.¹

10 To the extent that Petitioner intended this motion to be one for reconsideration under
11 Local Civil Rule 7(h), the motion is untimely, as such motions “shall be filed within fourteen
12 days after the order to which it relates is filed.” LCR 7(h). However, to the extent that Petitioner
13 intended this motion to be one for reconsideration under Local Criminal Rule 12(b)(10), that
14 Rule does not set forth the timing to make such motion, and it is therefore arguably timely. *See*
15 LCrR 12(b)(10). Accordingly, in an abundance of caution, the Court will address Petitioner’s
16 motion.
17

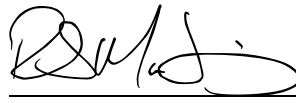
19 “Motions for reconsideration are disfavored. The court will ordinarily deny such motions
20 in the absence of a showing of manifest error in the prior ruling or a showing of new facts or
21 legal authority which could not have been brought to its attention earlier with reasonable
22 diligence.” LCrR 12(b)(10). In his current motion, Petitioner essentially reiterates the same
23 arguments he made in his initial motion with respect to the alleged miscalculation of the actual
24 losses suffered by his clients and victims. *Compare* Dkt. #1 with Dkt. #21. The Court considered
25

27 ¹ Moreover, the most recent Judgment against Petitioner in his criminal case was April 5, 2017.
28 Case No. CR15-0349RSM, Dkt. #53. Thus, any Rule 59(e) motion related to that Judgment
would be untimely.

1 those arguments and rejected them as discussed in its Order. *See* Dkt. #20. Nothing presented
2 by Petitioner in the instant motion reflects a clear error in that decision, or persuades the Court
3 that it made any error in reaching its decision.

4 Accordingly, the Court hereby finds and ORDERS that Petitioner's Motion to Alter or
5 Amend the Judgment Pursuant to Federal Rule of Civil Procedure 59(e) (Dkt. #21) is DENIED.
6

7 DATED this 4 day of October, 2017.

8
9 

10 RICARDO S. MARTINEZ
11 CHIEF UNITED STATES DISTRICT JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28